

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	10/028,122	MIDDELJANS ET AL.
	Examiner	Art Unit
	Freda A. Nelson	3639

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to Amendment filed March 14, 2006.
2.  The allowed claim(s) is/are 1-9.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 03/23/2006.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

***Response to Amendment***

The amendment received on March 14, 2006 is acknowledged and entered.

Claims 1, 14, and 16 have been amended. Claims 13 and 15 have been canceled. No claims have been added. Claims 1-9 are currently pending in the application.

***Rejections - 35 USC § 101***

1. The rejections under 35 USC 112 and 35 USC 103 have been withdrawn due to applicant's amendment.

**EXAMINER'S AMENDMENT**

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Aaron Waxler (Reg. No.48027) on Thursday, March 24, 2006.

3. The application has been amended as follows:

**IN THE CLAIMS**

1. (Currently Amended) Process for controlling delivery of digital works across a communication channel wherein there is to be paid for the content of said digital

works, wherein the process is executable on a server computer and a client computer said process comprising the steps of:

- a) configuring for delivery of the content of a digital work between the server and the client, via a regular flow of packets;
- b) creating at the server and executing the regular flow of packets, wherein the packet size is less than the total size of said digital work, of said content from the server to the client using a transmission or transport protocol, wherein the client is requested to acknowledge the received packets;
- c) initiation of a return traffic of acknowledgement codes (ACKS) by the client to the server wherein a payment token is associated with each acknowledgement code or with a number of acknowledgement codes;
- d) validation by the server that each acknowledgement code requested of the client is received by the server; and
- e) continuation of the regular flow of packets of said content by the server only if the acknowledgement codes requested of the client are received as specified by the server;
- f) accumulation of the payment tokens received from the client in a pay-for-each-packet-received-as-acknowledged-by-the-client mode of operation; and
- g) arrangement of billing of and payment by the client for all received packets on the basis of at least said accumulated payment tokens.

Claims 10-16 (Canceled)

***Allowable Subject Matter***

Claims 1-9 are allowed.

4. The following is an examiner's statement of reasons for allowance:

As per independent claim 1, specifically, Stefik et al. (US Patent Number 6,236,971) in view of Griswold (US Patent Number 6,236,971) do not disclose or fairly teach:

e) continuation of the regular flow of packets of said content by the server only if the acknowledgement codes requested of the client are received as specified by the server; and

f) accumulation of the payment tokens received from the client in a pay-for-each-packet-received-as-acknowledged-by-the-client mode of operation.

5. The NPL prior art of record, specifically, "WHO OWNS DIGITAL WORKS?" fails to disclose or fairly teach:

e) continuation of the regular flow of packets of said content by the server only if the acknowledgement codes requested of the client are received as specified by the server; and

f) accumulation of the payment tokens received from the client in a pay-for-each-packet-received-as-acknowledged-by-the-client mode of operation.

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6. The foreign prior art of record, specifically, EP 715243, while disclosing a system for controlling the distribution and use of digital works having a fee reporting mechanism, fails to disclose or fairly teach:

- e) continuation of the regular flow of packets of said content by the server only if the acknowledgement codes requested of the client are received as specified by the server; and
- f) accumulation of the payment tokens received from the client in a pay-for-each-packet-received-as-acknowledged-by-the-client mode of operation.

7. The remaining dependent claims are considered allowable, as they are dependent and based off of an allowable independent claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

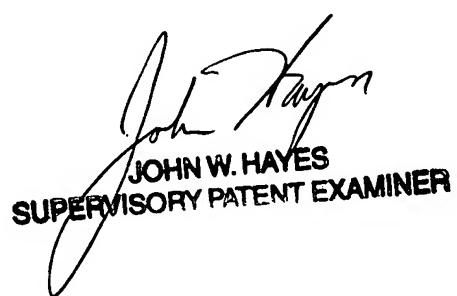
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 03/24/2006



JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER